

# In the United States Court of Federal Claims

No. 12-429L

(Filed: August 29, 2016)

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THE BLACKFEET TRIBE OF THE \*  
BLACKFEET INDIAN RESERVATION, \*  
\*  
Plaintiff, \*  
\*  
v. \*  
\*  
THE UNITED STATES, \*  
\*  
Defendant. \*  
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## SANCTIONS ORDER

During the trial in Missoula, Montana on August 16-25, 2016, Defendant's counsel violated the Court's September 28, 2015 Pretrial Order. Paragraph 7b of the Pretrial Order states that "Once counsel tenders a witness to opposing counsel for cross-examination, the presenting counsel may not hold substantive discussions with the witness until cross-examination is concluded." The Court reiterated this requirement during the Final Pretrial Conference held by telephone on August 8, 2016.

On August 24, 2016, during the cross-examination of Defendant's expert, Dr. Robin Cantor, evidence revealed that Defendant's counsel engaged in a substantive conference with Dr. Cantor while on an afternoon break. The Court regarded this conference as a plain violation of paragraph 7b of the Pretrial Order, and directed that Dr. Cantor's testimony cease at that point. The Court also ruled that all of her testimony and expert reports in this matter shall be disregarded.

On August 25, 2016, during an unrecorded in camera conference requested by Defendant, the Court received information voluntarily provided by Defendant's counsel that substantive discussions occurred with another expert, Dr. Mark Finney, during the evening of August 22, 2016 while cross-examination was in progress. In light of

Defendant's voluntary disclosure of this earlier violation, the Court accepted Defendant's recommendation that Dr. Finney's redirect testimony shall be disregarded.

Accordingly, due to Defendant's violations of the Pretrial Order, the entire testimony and expert reports of Dr. Robin Cantor, and the redirect testimony of Dr. Mark Finney, shall be stricken and not further considered in this case.

IT IS SO ORDERED.

s/Thomas C. Wheeler  
THOMAS C. WHEELER  
Judge